



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 9, 2019

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2019-22080

Dear Ms. Henry:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 779743 (Plano Tracking # ORR P001622-060119).

The Plano Police Department (the "department") received a request for information pertaining to a named individual, including an arrest on a specified date. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part, the following:

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find report numbers 2018-00099546 and 2018-00105082 were used or developed in investigations by the department of alleged or suspected child abuse and fall within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine report numbers 2018-00099546 and 2018-00105082 are generally confidential pursuant to section 261.201. However, section 261.201(a) provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance.

We note the requestor is a representative of the Probation Office of the United States District Court for the Eastern District of Texas (the “probation office”) and, thus, may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides, “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any criminal history record information [(“CHRI”)] maintained by [DPS] about a person.” *See* Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). The submitted information contains CHRI of the named individual. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2), but only for a criminal justice purpose and purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 66.001(1) of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 66.001(1) defines “administration of criminal justice” as “the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Crim. Proc. Code art. 66.001(1).

The requestor is a representative of the probation office. We understand the probation office is a criminal justice agency and the requestor indicates she intends to use the CHRI for a criminal justice purpose. However, we cannot determine whether the requestor intends to use the CHRI at issue for purposes consistent with the Family Code. Accordingly, we must rule conditionally. If the department determines the requestor seeks the CHRI for purposes consistent with the Family Code, then the department must make available to the requestor CHRI pertaining to the named individual from report numbers 2018-00099546 and 2018-00105082. Although you also raise section 552.108 of the Government Code for this information, we note a statutory right of access prevails over the Act’s general exceptions to public disclosure, including section 552.108. *See* Open Records Decision Nos. 631 at 4 (1993), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the department must withhold the remaining information in report numbers 2018-00099546 and 2018-00105082 under section 552.101 in conjunction with section 261.201(a). However, if the department determines release of CHRI is not for purposes consistent with the Family Code, then the department must withhold report numbers 2018-00099546 and 2018-00105082 in their entireties under section 552.101 in conjunction with section 261.201(a).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the remaining information pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may generally withhold the remaining information under section 552.108(a)(1).

As noted above, the requestor is a representative of the probation office and has a right of access to some of the information at issue under chapter 411 of the Government Code, which prevails over section 552.108. *See* Gov’t Code §§ 411.089(a), .087(a)(2); ORDs 613, 451. Accordingly, with the exception of the CHRI pertaining to the named individual, which must be released to the requestor pursuant to section 411.087(a)(2) of the Government Code, and the basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1).

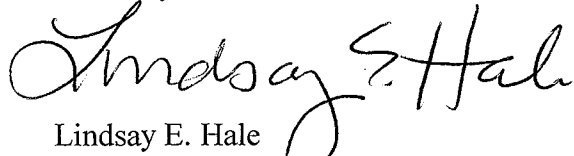
In summary, if the department determines release of the CHRI is consistent with the Family Code, the department release to the requestor CHRI pertaining to the named individual from report numbers 2018-00099546 and 2018-00105082 and must withhold the remaining information in report numbers 2018-00099546 and 2018-00105082 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Alternatively, if the department determines release of the CHRI is not consistent with the Family Code, the department must withhold report numbers 2018-00099546 and 2018-00105082 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the CHRI pertaining to the named individual and the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The department must release the remaining information.²

²We note the requestor has a right of access to some of the information being released in this instance. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 779743

Enc. Submitted documents

c: Requestor
(w/o enclosures)